


MEMORANDUM


THE WHITE HOUSE
WASHINGTON

~~SECRET/SENSITIVE~~ XGDS

ACTION

August 12, 1976

MEMORANDUM FOR: THE PRESIDENT
FROM: BRENT SCOWCROFT 
SUBJECT: Army Special Operations Field Office in Berlin

The Army's Special Operations Field Office (SOFO) in Berlin has been conducting  operations in the U.S. Sector since about 1947 to insure security and public order in the city. The Departments of Defense and Army now believe that these activities are inappropriate to the traditional missions of the Army, and hence Army should no longer operate SOFO. The Department of State believes that important U.S. legal and political interests are involved and, since the interested agencies could not come to an agreement, requested that the future of SOFO be made a matter of formal consideration by the National Security Council.

At my request, representatives of State, Defense, Justice, and CIA, formed a group to study the value of SOFO and its legal basis. The group was asked to provide recommendations for SOFO's future activities including the auspices under which it should operate. The findings of the group, which have the concurrence of the four agencies, are summarized below.

Value of SOFO

State, Defense, and CIA agree that the maintenance of certain SOFO activities is essential to meet U.S. responsibilities in Berlin. They believe that the critical element is SOFO's surveillance of specific targets known or suspected to be a threat to the security of Berlin or the Allied presence there. Providing these SOFO services to meet legitimate needs of the Allies also is important to insure the continued availability to U.S. security agencies of similar intelligence from SOFO's British and French counterparts.

XGDS of E.O. 11652 by authority
of Brent Scowcroft; Exemption
Category Section 5(B) (2) and
(3).

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Legal Authority for SOFO

The legal authority for SOFO activities is derived from the President's authority, as Commander-in-Chief, to establish military occupation governments, including institutions for the maintenance of public safety. (Berlin remains legally a militarily occupied area.)

The agencies are divided as to whether the applicable Executive Orders (10608 and 11905) provide sufficient legal basis for Army to continue operating SOFO. 1/

- Defense believes that E.O. 10608 limits the U.S. Military Commander in Germany to military responsibilities which do not include the collection of foreign intelligence and counterintelligence for the CIA, Allies, or German civil authorities or criminal investigatory data for the Allies or Germans.
- Defense also believes that E.O. 11905 assigns it responsibility only for military intelligence and specifically assigns most of the types of activities conducted by SOFO to CIA.
- Defense questions whether Army funds can be spent on SOFO activities which are not primarily for the benefit of Army in light of the statutory requirement that funds only be expended for the purposes for which they are appropriated. 2/
- State believes that the security of Berlin and support of the U.S. presence is an integrated responsibility of all agencies active there and that E.O. 10608 provides adequate authority for Army to operate SOFO. State and Justice believe that SOFO activities are authorized by this Order since they are not inconsistent with Army's mission in Berlin.
- State and CIA consider that E.O. 11905 expressly grants Defense authority to conduct programs such as SOFO that are necessary to priority national intelligence objectives. Justice essentially agrees that there is sufficient legal authorization for Army to operate SOFO.

1/ E.O. 10608, United States Authority and Functions in Germany, 1955.
E.O. 11905, United States Foreign Intelligence Activities, 1976.
2/ 31 U.S.C. Section 628 (1970).

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- State believes that the statute authorizing functions granted to the Secretary of the Army is broad enough to include any military government function, including expenditure of funds, authorized by the President. 1/

Despite more restrictive controls imposed on SOFO by the Army, the group agrees that continued surveillance in Berlin requires the updating of legal authorization and procedures. Essentially, the group proposes that surveillance requests be approved at a political level of the United States Government.

Agency Responsible for Future SOFO Activities

State and CIA believe SOFO should remain an Army operation while Defense maintains SOFO should be transferred to another, non-Defense agency, most logically the CIA.

In addition to its legal arguments, Defense offers the following:

- SOFO's primary contribution is not to the Army mission, nor is Defense now a major consumer of SOFO products.
- Almost all of SOFO's personnel as well as its regulatory system governing the approval of requests and maintenance of a technical surveillance indexing system could be transferred easily to another agency.

State and CIA offer the following additional reasons for SOFO to remain an Army operation:

- There is no legal advantage and potential political disadvantage in shifting SOFO to CIA. Army's operation of SOFO has been discussed with appropriate staff members of the Senate Select Committee on Intelligence, none of whom raised objections to its current procedures.
- CIA lacks a capability in Germany to maintain a regulatory system for approvals, nor does it have the resources to perform the technical surveillance indexing.
- Army has the experience and lines of command to operate SOFO for foreign intelligence and criminal investigatory purposes. It is organized to meet constitutional, legal, and regulatory requirements.

1/ 10 U.S.C. Section 3102.

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CIA submits, and Justice concurs, that CIA performance of SOFO functions related to law enforcement would be contrary to the restrictions of the CIA Act of 1949, and demonstrations of clear intent by the Executive and Congress that CIA is to refrain from any activity that would raise any question of propriety.

Defense argues that law enforcement and public safety aspects of SOFO could easily be transferred to another, non-SOFO element.

CIA and State believe that division of management and responsibility for this sensitive activity makes little sense. The SOFO capability should be retained by Army which has the authority and experience to perform all the necessary functions, and not by CIA whose charter is circumscribed by law and regulation, and which lacks continuous involvement in criminal justice.

My Views of Key Considerations

The continuation of critical SOFO activities is necessary to meet U.S. responsibilities in Berlin, and the procedures and legal authority for those activities should be revised.

Army's experience, institutionalized procedures, and established relationships argue strongly for SOFO remaining under Army auspices. Defense's objections are not persuasive. Army is not in Berlin exclusively for the benefit of Army, but for the security of the city and U.S. interests there. Army's responsibility has been clearly set forth in Executive Orders, and also demonstrated de facto by the daily operation of Army in Berlin for some three decades. Whatever legal qualms Defense has about SOFO could be resolved by a revised, more specific Presidential directive.

Operating SOFO under CIA auspices is not attractive for two reasons:

- Justice's determination that CIA could not perform certain essential SOFO activities, except in violation of the law. Defense's proposal to split SOFO to accommodate Justice's objection seems a step backward in terms of close control and responsiveness to policy considerations.
- [REDACTED] is a delicate political matter and enlarging CIA's role would leave it vulnerable to objections from Congress.

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In light of these considerations, I propose a Presidential directive in the form of a National Security Decision Memorandum which incorporates the following provisions:

- Army is to continue to [REDACTED]
[REDACTED]
to meet specific security requirements in Berlin.
- Army is to determine the legal adequacy of intercept requests and, together with State, develop and maintain a regulatory regime.
- The Chief of the U. S. Mission is to assure that SOFO activities are consistent with U. S. responsibilities and interests. He may authorize, in unusually urgent situations, a specific intercept for a limited period, normally no longer than 48 hours.
- CIA is to advise Army on foreign intelligence and counterintelligence intercepts.
- The Attorney General must approve all requests for non-consensual surveillance of U. S. persons, and must be informed of all operations which, though not otherwise requiring his approval, regularly intercept communications of U. S. persons.
- Requests for non-consensual surveillance of any person or organization must be approved at least at the level of Assistant Secretary of the requesting U. S. agency, or Under Secretary level in the instance of branches of the armed services.
- [REDACTED]

RECOMMENDATION

That you authorize me to sign the attached National Security Decision Memorandum at Tab A directing Army to conduct selected intercept activities in Berlin within specific guidelines. Phil Buchen concurs.

Approve

RP7

Disapprove

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